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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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07/08/2003

Gisele Betra

124373

6142

25944

7590

12/15/2006

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EXAMINER

AKHAVANNIK, HADI

ART UNIT

PAPER NUMBER

2624

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,753	BETRA, GISELE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hadi Akhavannik	2624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/18/2003</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

1. Please note that the Examiner is making 3 separate sets of rejections. Each set of rejections is given its own title.

### *Oath/Declaration*

2. The Oath is not signed.

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Nonfunctional descriptive material that does not constitute a statutory process, machine, manufacture or composition of matter and should be rejected under 35 U.S.C. Sec. 101. Certain types of descriptive material, such as music, literature, art, photographs and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture or composition of matter. USPTO personnel should be prudent in applying the foregoing guidance. Nonfunctional descriptive material may be claimed in combination with other functional descriptive multi-media material on a computer-readable medium to provide the necessary functional and structural interrelationship to satisfy the requirements of 35 U.S.C. Sec. 101. The presence of the claimed nonfunctional descriptive material is not necessarily determinative of nonstatutory subject matter. For example, a computer that recognizes a particular grouping of musical notes read from memory and upon recognizing that particular sequence, causes another defined series of notes to be played, defines a functional interrelationship among that data and the computing processes performed when utilizing that data, and as such is statutory because it implements a statutory process.

3. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

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Claim 1 recites a plurality of images and a video sequence which does not impart functionality to a computer or computing device, and is thus considered nonfunctional descriptive material. Such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

Claims 2-9 are rejected because they depend upon independent claim 1.

**Rejection 1:**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (6253210, referred to as "Smith" herein) in view of Qian et al. (6697506, referred to as "Qian" herein).

Regarding claim 1, Smith discloses an atlas with a plurality of images (figure 6, item 610, column 5 lines 4-16 discloses an atlas which has plurality of medical images. Each medical image shows a different view)

and at least one video sequence associated with at least one of the images of the atlas, said sequence comprising images expressing said characteristic (column 9 lines 34-57 discloses associating a video with the atlas images).

Smith does not explicitly disclose displaying different grades of the body typology.

Qian discloses displaying atlas images corresponding to different grades of at least one characteristic of body typology (see column 5 lines 35-57 and column 6 lines 15-34 as it discloses displaying different grades of a body typology).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith a multiple image grades displaying means as taught by Qian. The reason for the combination is because it allows the operator to make a selection of the body typology by comparing it against multiple expert images. For motivation see Qian column 5 lines 52-57.

Regarding claim 2, Smith discloses an atlas wherein the images of the atlas are electronic images suitable for being displayed on a screen (see figure 6 as it discloses displaying electronic images on a screen).

Regarding claim 3, Smith discloses displaying the images simultaneously on a screen (figure 6 of Smith discloses displaying at least 4 images from an atlas).

Regarding claim 4, Smith discloses that a fraction only of the images of the atlas is displayed simultaneously on a screen (column 9 lines 45-55 disclose that only images of the putamen are shown if the operator selects the putamen. The atlas has many images related to many medical images).

Regarding claim 5, Smith discloses that at least one image of the atlas is displayed on a screen, and wherein the atlas is configured in such a manner that acting on a cursor enables the displayed image to be replaced by another image of the atlas

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(see column 6 line 56 to column 7 line 30 and column 9 lines 48-57 discloses that a user is able to select an image and that image is replaced by another image or a sequence of images which makes a video).

Regarding claim 6, Smith discloses that the images of the atlas are generated by morphing (see figures 3 and 4 and column 7 lines 3-37 discloses that images or morphed to fit patient data in the mapping engine).

Regarding claim 7, Smith discloses including action buttons associated with the respective images of the atlas and enabling display of the corresponding video sequence to be triggered (see column 9 line 53 as it discloses a "play movie" button).

Regarding claim 8, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art at the time of the invention to include in Smith in view of Qian a means to associate audio to the video clips. The reason for the combination is because it makes for a more robust system that can play audio titles of the video clips and promote a better user interface. Also, please note that Smith already discloses audio and video clips in an atlas in column 5 lines 5-7.

5. Claims 9-15, 17-34, 43-44 are rejected under 35 USC 103(a) as being unpatentable over Smith in view of Qian as applied to claim 1 above and in further view of Kenet et al. (5016173, referred to as "Kenet" herein).

Regarding claim 9, the rejection of claim 1 discloses all aspects of claim 9 except it does not explicitly disclose using a camera to acquire an image.

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Kenet discloses using a camera to capture an image (column 9 lines 40-63, disclose using a camera).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Qian a camera to acquire images as taught by Kenet. The reason for the combination is because a camera is the most common device used to acquire images. Further, both Smith and Qian disclose using electronic images.

Regarding claim 10, Kenet discloses using different magnifications (see column 9 lines 49-63).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Qian in view of Kenet.

Kenet discloses a magnification means on a camera.

Kenet does not disclose expressly a magnification factor greater than equal to 20 or 160.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to specify the magnification factor. Applicant has not disclosed that specifying the magnification provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any magnification level because the exact magnification does not alter the overall functionality of the system.

Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the magnification level of Kenet to obtain the invention as specified in claim 11.

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Regarding claim 12, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art to include in the combination of Smith, Qian and Kenet a push button that freezes an image. The reason is because Smith already discloses a buttons that are used to play video and it is very well known to have a button that results in an image being displayed.

Regarding claim 13, please see figure 2, item 245 of Smith as it discloses a microprocessor.

Claim14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Qian in view of Kenet.

Smith discloses a video displaying means.

Smith does not disclose expressly disclose that the video will last for 5 seconds.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to set the exact time length for the video to be displayed. Applicant has not disclosed that displaying the video for 5 seconds provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any time frame because the duration of video clip does not alter the overall functionality of the invention.

Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the duration of the video of Smith to obtain the invention as specified in claim 14.



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Regarding claim 15, Smith discloses a computer and any computer has a means of being turned off. Therefore, the user can interrupt the video by turning off the computer.

Regarding claim 17, Kenet discloses an illumination means (see column 6 lines 23-29)

Regarding claim 18, Kenet discloses that the lighting can be selected between lighting of the following types: UV, IR, or visible light (see column 6 lines 2-23 as discloses IR and visible light).

Regarding claims 19 and 20, the rejection of claim 10 discloses that the image does not have to be magnified and if the image is not magnified then the image display will be similar to the image coming from the camera. Also, the images are always associated with the images coming from the camera because the camera takes the images.

Regarding claim 21, the examiner notes that all images are frozen images. Non-frozen images are commonly referred to as video.

Regarding claim 22, the examiner notes that the digital camera used by Kemet is capable of measuring many color magnitudes because all camera must be able to measure many color magnitudes.

Regarding claim 23, the examiner notes that a camera must be able to measure skin color in order to produce a quality image.

Regarding claim 24, Kenet discloses a printer in column 5 lines 5-9.

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Regarding claim 25, Smith discloses that the processor means are configured to establish a diagnosis on the basis of at least one image selected from the atlas (see column 9 lines 2-33 as it discloses diagnostic means).

Regarding claim 26, Smith discloses that all the information is sent to a remote point which is a computer.

Regarding claims 27 and 28, Smith discloses using an atlas and diagnosing the type of body typology in the rejection of claim 25.

Regarding claim 29, please see the rejection of claim 25 as it discloses all aspects of claim 29.

Regarding claim 30, the rejection of claim 29 also discloses using a camera.

Regarding claim 31, the rejection of claim 26 discloses that the diagnosis is done by the microprocessor on the computer.

Regarding claim 32, please see the rejection of claim 25 and also see Smith, column 9 lines 18-25 as it discloses treatment planning.

Regarding claim 33, the rejection of claim 32 discloses that a camera is used.

Regarding claim 34, the rejection of claim 31 discloses all aspects of claim 34.

Regarding claims 43-44, the rejection of claim 9 discloses all aspects of claims 43-44.

6. Claim 16 is rejected under 35 USC 103 as being unpatentable over Smith in view of Qian as applied to claim 15 above and in further view of Chin et al. (4998972, referred to as "Chin" herein).

Regarding claim 16, Smith and Qian disclose all aspects of claim 16 except they do not disclose that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen.

Chin discloses that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen (see column 2 lines 16-32 as it discloses freezes or interrupting the previous image and then showing a new live image simultaneously with the old image).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Qian an multiple image viewing means as taught by Chin. The reason for the combination is because it allows the system to be more robust and lets the user diagnose a body typology in real time. See motivation by Chin in column 2 lines 33-43. Further all inventions are from the same field of endeavor or medical imaging.

7. Claims 35-42 are rejected under 35 USC 103(a) as being unpatentable over Smith in view of Qian in view of Kenet in further view of Gutkowicz-Krusin et al. 6208749, referred to as "Krusin" herein).

Regarding claims 35-36, the rejection of claims 27-28 disclose all aspects of claims 35 and 36 except they do not explicitly disclose judging hair.

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Krusin discloses locating hair and other skin blotches (see column 12, line 58 to column 13 line 5 and column 14 lines 45-62 as it disclose finding skin conditions and the presence of hair in medical images).

It would have been obvious to combine in Smith, Qian, and Kenet a hair and skin blotch locating means as taught by Krusin. The reason for the combination is because it makes for a more robust system that can locate and judge the locations of different body typology in order to give the operator more information.

Regarding claims 37-42, the rejection of claims 35-36 also disclose all aspects of claims 37-42 as they disclose finding the conditions of the skin.

## **Rejection 2**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (6253210, referred to as "Smith" herein) in view of Bazin (7006657).

Regarding claim 1, Smith discloses an atlas with a plurality of images (figure 6, item 610, column 5 lines 4-16 discloses an atlas which has plurality of medical images. Each medical image shows a different view)

and at least one video sequence associated with at least one of the images of the atlas, said sequence comprising images expressing said characteristic (column 9 lines 34-57 discloses associating a video with the atlas images).

Smith does not explicitly disclose displaying different grades of the body typology.

Bazin discloses displaying atlas images corresponding to different grades of at least one characteristic of body typology (see column 14 lines 42-60 displaying different grades of a body typology).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith a multiple image grades displaying means as taught by Bazin. The reason for the combination is because it allows the operator to make a selection of the body typology by comparing it against multiple expert images.

Regarding claim 2, Smith discloses an atlas wherein the images of the atlas are electronic images suitable for being displayed on a screen (see figure 6 as it discloses displaying electronic images on a screen).

Regarding claim 3, Smith discloses displaying the images simultaneously on a screen (figure 6 of Smith discloses displaying at least 4 images from an atlas).

Regarding claim 4, Smith discloses that a fraction only of the images of the atlas is displayed simultaneously on a screen (column 9 lines 45-55 disclose that only images of the putamen are shown if the operator selects the putamen. The atlas has many images related to many medical images).

Regarding claim 5, Smith discloses that at least one image of the atlas is displayed on a screen, and wherein the atlas is configured in such a manner that acting on a cursor enables the displayed image to be replaced by another image of the atlas (see column 6 line 56 to column 7 line 30 and column 9 lines 48-57 discloses that a user is able to select an image and that image is replaced by another image or a sequence of images which makes a video).

Regarding claim 6, Smith discloses that the images of the atlas are generated by morphing (see figures 3 and 4 and column 7 lines 3-37 discloses that images or morphed to fit patient data in the mapping engine).

Regarding claim 7, Smith discloses including action buttons associated with the respective images of the atlas and enabling display of the corresponding video sequence to be triggered (see column 9 line 53 as it discloses a “play movie” button).

Regarding claim 8, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art at the time of the invention to include in Smith in view of Bazin a means to associate audio to the video clips. The reason for the combination is because it makes for a more robust system that can play audio titles of the video clips and promote a better user interface. Also, please note that Smith already discloses audio and video clips in an atlas in column 5 lines 5-7.

9. Claims 9-15, 17-34, 43-44 are rejected under 35 USC 103(a) as being unpatentable over Smith in view of Bazin as applied to claim 1 above and in further view of Kenet et al. (5016173, referred to as “Kenet” herein).

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Regarding claim 9, the rejection of claim 1 discloses all aspects of claim 9 except it does not explicitly disclose using a camera to acquire an image.

Kenet discloses using a camera to capture an image (column 9 lines 40-63, disclose using a camera).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Bazin a camera to acquire images as taught by Kenet. The reason for the combination is because a camera is the most common device used to acquire images. Further, both Smith and Bazin disclose using electronic images.

Regarding claim 10, Kenet discloses using different magnifications (see column 9 lines 49-63).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Qian in view of Kenet.

Kenet discloses a magnification means on a camera.

Kenet does not disclose expressly a magnification factor greater than equal to 20 or 160.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to specify the magnification factor. Applicant has not disclosed that specifying the magnification provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any magnification level because the exact magnification does not alter the overall functionality of the system.

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Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the magnification level of Kenet to obtain the invention as specified in claim 11.

Regarding claim 12, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art to include in the combination of Smith, Bazin and Kenet a push button that freezes an image. The reason is because Smith already discloses a buttons that are used to play video and it is very well known to have a button that results in an image being displayed.

Regarding claim 13, please see figure 2, item 245 of Smith as it discloses a microprocessor.

Claim14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Bazin in view of Kenet.

Smith discloses a video displaying means.

Smith does not disclose expressly disclose that the video will last for 5 seconds.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to set the exact time length for the video to be displayed. Applicant has not disclosed that displaying the video for 5 seconds provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any time frame because the duration of video clip does not alter the overall functionality of the invention.



Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the duration of the video of Smith to obtain the invention as specified in claim 14.

Regarding claim 15, Smith discloses a computer and any computer has a means of being turned off. Therefore, the user can interrupt the video by turning off the computer.

Regarding claim 17, Kenet discloses an illumination means (see column 6 lines 23-29)

Regarding claim 18, Kenet discloses that the lighting can be selected between lighting of the following types: UV, IR, or visible light (see column 6 lines 2-23 as discloses IR and visible light).

Regarding claims 19 and 20, the rejection of claim 10 discloses that the image does not have to be magnified and if the image is not magnified then the image display will be similar to the image coming from the camera. Also, the images are always associated with the images coming from the camera because the camera takes the images.

Regarding claim 21, the examiner notes that all images are frozen images. Non-frozen images are commonly referred to as video.

Regarding claim 22, the examiner notes that the digital camera used by Kemet is capable of measuring many color magnitudes because all camera must be able to measure many color magnitudes.

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Regarding claim 23, the examiner notes that a camera must be able to measure skin color in order to produce a quality image.

Regarding claim 24, Kenet discloses a printer in column 5 lines 5-9.

Regarding claim 25, Smith discloses that the processor means are configured to establish a diagnosis on the basis of at least one image selected from the atlas (see column 9 lines 2-33 as it discloses diagnostic means).

Regarding claim 26, Smith discloses that all the information is sent to a remote point which is a computer.

Regarding claims 27 and 28, Smith discloses using an atlas and diagnosing the type of body typology in the rejection of claim 25.

Regarding claim 29, please see the rejection of claim 25 as it discloses all aspects of claim 29.

Regarding claim 30, the rejection of claim 29 also discloses using a camera.

Regarding claim 31, the rejection of claim 26 discloses that the diagnosis is done by the microprocessor on the computer.

Regarding claim 32, please see the rejection of claim 25 and also see Smith, column 9 lines 18-25 as it discloses treatment planning.

Regarding claim 33, the rejection of claim 32 discloses that a camera is used.

Regarding claim 34, the rejection of claim 31 discloses all aspects of claim 34.

Regarding claims 43-44, the rejection of claim 9 discloses all aspects of claims 43-44.

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10. Claim 16 is rejected under 35 USC 103 as being unpatentable over Smith in view of Qian as applied to claim 15 above and in further view of Chin et al. (4998972, referred to as "Chin" herein).

Regarding claim 16, Smith and Bazin disclose all aspects of claim 16 except they do not disclose that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen.

Chin discloses that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen (see column 2 lines 16-32 as it discloses freezes or interrupting the previous image and then showing a new live image simultaneously with the old image).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Bazin a multiple image viewing means as taught by Chin. The reason for the combination is because it allows the system to be more robust and lets the user diagnose a body typology in real time. See motivation by Chin in column 2 lines 33-43. Further all inventions are from the same field of endeavor or medical imaging.

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11. Claims 35-42 are rejected under 35 USC 103(a) as being unpatentable over Smith in view of Bazin in view of Kenet in further view of Gutkowicz-Krusin et al. 6208749, referred to as "Krusin" herein).

Regarding claims 35-36, the rejection of claims 27-28 disclose all aspects of claims 35 and 36 except they do not explicitly disclose judging hair.

Krusin discloses locating hair and other skin blotches (see column 12, line 58 to column 13 line 5 and column 14 lines 45-62 as it disclose finding skin conditions and the presence of hair in medical images).

It would have been obvious to combine in Smith, Bazin, and Kenet a hair and skin blotch locating means as taught by Krusin. The reason for the combination is because it makes for a more robust system that can locate and judge the locations of different body typology in order to give the operator more information. Also please note that Bazin discloses many body typologies in column 11 lines 51-59.

Regarding claims 37-42, the rejection of claims 35-36 also disclose all aspects of claims 37-42 as they disclose finding the conditions of the skin.

### **Rejection 3**

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claim 1-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 157 of U.S. Patent No. 7006657 in view of Smith.

Regarding claim 1, Patent 7006657 discloses an atlas with a plurality of images (see the last sentence of claim 157)

different grades of the body typology (see the second paragraph of claim 157, from which claim 157 depends.

Patent 7006657 does not explicitly disclose using a video.

Smith discloses at least one video sequence associated with at least one of the images of the atlas, said sequence comprising images expressing said characteristic (column 9 lines 34-57 discloses associating a video with the atlas images).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Patent 7006657 a video means as taught by Smith. The reason for

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the combination is because it allows the operator to make a selection of the body typology by comparing it against a video to give a better perspective.

Regarding claim 2, claim 7 of Patent 7006657 discloses an atlas wherein the images of the atlas are electronic images suitable for being displayed on a screen.

Regarding claim 3, Smith discloses displaying the images simultaneously on a screen (figure 6 of Smith discloses displaying at least 4 images from an atlas).

Regarding claim 4, Smith discloses that a fraction only of the images of the atlas is displayed simultaneously on a screen (column 9 lines 45-55 disclose that only images of the putamen are shown if the operator selects the putamen. The atlas has many images related to many medical images).

Regarding claim 5, Smith discloses that at least one image of the atlas is displayed on a screen, and wherein the atlas is configured in such a manner that acting on a cursor enables the displayed image to be replaced by another image of the atlas (see column 6 line 56 to column 7 line 30 and column 9 lines 48-57 discloses that a user is able to select an image and that image is replaced by another image or a sequence of images which makes a video).

Regarding claim 6, claim 159 of Patent 7006657 discloses that the images of the atlas are generated by morphing.

Regarding claim 7, Smith discloses including action buttons associated with the respective images of the atlas and enabling display of the corresponding video sequence to be triggered (see column 9 line 53 as it discloses a "play movie" button).

Regarding claim 8, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art at the time of the invention to include in Smith in view of Qian a means to associate audio to the video clips. The reason for the combination is because it makes for a more robust system that can play audio titles of the video clips and promote a better user interface. Also, please note that Smith already discloses audio and video clips in an atlas in column 5 lines 5-7.

13. Claims 9-15, 17-34, 43-44 are rejected under 35 USC 103(a) as being unpatentable over Smith in view of Patent 7006657 as applied to claim 1 above and in further view of Kenet et al. (5016173, referred to as "Kenet" herein).

Regarding claim 9, the rejection of claim 1 discloses all aspects of claim 9 except it does not explicitly disclose using a camera to acquire an image.

Kenet discloses using a camera to capture an image (column 9 lines 40-63, disclose using a camera).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Patent 7006657 a camera to acquire images as taught by Kenet. The reason for the combination is because a camera is the most common device used to acquire images. Further, both Smith and Patent 7006657 disclose using electronic images.

Regarding claim 10, Kenet discloses using different magnifications (see column 9 lines 49-63).

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Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Patent 7006657 in view of Kenet.

Kenet discloses a magnification means on a camera.

Kenet does not disclose expressly a magnification factor greater than equal to 20 or 160.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to specify the magnification factor. Applicant has not disclosed that specifying the magnification provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any magnification level because the exact magnification does not alter the overall functionality of the system.

Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the magnification level of Kenet to obtain the invention as specified in claim 11.

Regarding claim 12, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art to include in the combination of Smith, Patent 7006657 and Kenet a push button that freezes an image. The reason is because Smith already discloses a buttons that are used to play video and it is very well known to have a button that results in an image being displayed.

Regarding claim 13, please see figure 2, item 245 of Smith as it discloses a microprocessor.



Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Patent 7006657 in view of Kenet.

Smith discloses a video displaying means.

Smith does not expressly disclose that the video will last for 5 seconds.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to set the exact time length for the video to be displayed. Applicant has not disclosed that displaying the video for 5 seconds provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any time frame because the duration of video clip does not alter the overall functionality of the invention.

Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the duration of the video of Smith to obtain the invention as specified in claim 14.

Regarding claim 15, Smith discloses a computer and any computer has a means of being turned off. Therefore, the user can interrupt the video by turning off the computer.

Regarding claim 17, Kenet discloses an illumination means (see column 6 lines 23-29)

Regarding claim 18, Kenet discloses that the lighting can be selected between lighting of the following types: UV, IR, or visible light (see column 6 lines 2-23 as discloses IR and visible light).

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Regarding claims 19 and 20, the rejection of claim 10 discloses that the image does not have to be magnified and if the image is not magnified then the image display will be similar to the image coming from the camera. Also, the images are always associated with the images coming from the camera because the camera takes the images.

Regarding claim 21, the examiner notes that all images are frozen images. Non-frozen images are commonly referred to as video.

Regarding claim 22, the examiner notes that the digital camera used by Kemet is capable of measuring many color magnitudes because all camera must be able to measure many color magnitudes.

Regarding claim 23, the examiner notes that a camera must be able to measure skin color in order to produce a quality image.

Regarding claim 24, Kenet discloses a printer in column 5 lines 5-9.

Regarding claim 25, Smith discloses that the processor means are configured to establish a diagnosis on the basis of at least one image selected from the atlas (see column 9 lines 2-33 as it discloses diagnostic means).

Regarding claim 26, Smith discloses that all the information is sent to a remote point which is a computer.

Regarding claims 27 and 28, Smith discloses using an atlas and diagnosing the type of body typology in the rejection of claim 25.

Regarding claim 29, please see the rejection of claim 25 as it discloses all aspects of claim 29.

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Regarding claim 30, the rejection of claim 29 also discloses using a camera.

Regarding claim 31, the rejection of claim 26 discloses that the diagnosis is done by the microprocessor on the computer.

Regarding claim 32, please see the rejection of claim 25 and also see Smith, column 9 lines 18-25 as it discloses treatment planning.

Regarding claim 33, the rejection of claim 32 discloses that a camera is used.

Regarding claim 34, the rejection of claim 31 discloses all aspects of claim 34.

Regarding claims 43-44, the rejection of claim 9 discloses all aspects of claims 43-44.

14. Claim 16 is rejected under 35 USC 103 as being unpatentable over Smith in view of Patent 7006657 as applied to claim 15 above and in further view of Chin et al. (4998972, referred to as "Chin" herein).

Regarding claim 16, Smith and Patent 7006657 disclose all aspects of claim 16 except they do not disclose that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen.

Chin discloses that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen (see column 2 lines 16-32 as it

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discloses freezes or interrupting the previous image and then showing a new live image simultaneously with the old image.

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Qian an multiple image viewing means as taught by Chin. The reason for the combination is because it allows the system to be more robust and lets the user diagnose a body typology in real time. See motivation by Chin in column 2 lines 33-43. Further all inventions are from the same field of endeavor or medical imaging.

Regarding claims 35-42, Claim 36 Patent 7006657 discloses all aspects of claims 35-42.

### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Akhavannik whose telephone number is 571-272-8622. The examiner can normally be reached on 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Mancuso can be reached on (571)272-7695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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12/5/06



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